

DEPARTMENT OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

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April 30, 2007

Mr. Hasan Ikhrata
Director, Planning and Policy Development
Southern California Association of Governments (SCAG)
818 West Seventh Street
Los Angeles, CA 90017-3435

Dear Mr. Ikhrata:

Re: Indian Tribal Lands and Regional Housing Need Allocation Plan

This letter responds to your recent correspondence addressed to the Director. While the Department appreciates being apprised of matters that SCAG and its members are engaged in relating to finalizing SCAG's regional housing need allocation (RHNA) plan, we would have appreciated first being consulted prior to receiving your letter as it contains many misrepresentations. Several references in your letter require clarification and correction. The following is provided to ensure SCAG and its members have accurate information as you work to finalize the RHNA. Issues addressed are based on the headings of your letter:

Regional Housing Need Total

Your statements pertaining to tribal nations' population, housing needs and the total regional housing need, are surprising for a number of reasons given SCAG's familiarity with State housing element law, recent amendments sponsored by SCAG, and how tribal matters have consistently been dealt with in housing and transportation planning. For example, your letter infers that the regional total could subsequently be reduced in individual communities. However, as you know, the law has been amended several times and strengthened to reaffirm that the **total** regional need must be maintained when distributing the RHNA and each jurisdiction, in updating its housing element, must address its **total** RHNA. There are separate statutes covering the Department's role in reviewing a jurisdiction's housing element, none of which allow for reduction of the RHNA.

After the issue of tribal nations' population was raised in December 2006, the Department consulted with the Department of Finance's Demographic Research Unit (DRU). At a February 6, 2007 meeting in Palm Springs (that included representatives from HCD, DRU, SCAG, Coachella Valley Association of Governments, and the Agua Caliente Tribe), Douglas Kuczynski, DRU staff, confirmed that tribal populations and housing are included in demographic data reported by Census and DOF that make up the regional household population total. He described DRU's data collection techniques and indicated local governments report housing permitted on tribal land in DRU's

Mr. Hasan Ikhata

Page 2

annual housing unit change survey based on building permit data. Thus, when projecting future housing needs, housing constructed on tribal lands is included in the base number of existing units and thereby reduces projected growth in new housing need.

In reference to the "State's determination," the implication that SCAG's RHNA was solely developed by the State is incorrect. In July 2005, the Department approved SCAG's request, pursuant to Government Code Section 65584.02, to use the forecast being developed by SCAG for the 2007 Regional Transportation Plan (RTP) update as the basis for allocating housing need in place of the State's determination. Per statutory provisions, doing so required "use of population and household forecast assumptions used in the regional transportation plan." SCAG staff has confirmed that tribal population data and assumptions are included in the RTP forecast. Also, in finalizing the Regional Housing Need Determination in November 2006, and requesting the Department accept SCAG's projections (Draft 2007 Integrated Growth Forecast), SCAG did not raise any concerns about Tribal nations' population and housing needs included in the RHNA or RTP projections.

Housing demand or need is not confined or constrained to a population or land boundaries. Many tribal members choose not to reside on tribal land; it is therefore not appropriate to exclude tribal populations' housing demand and unmet need from the RHNA. Inclusion of tribal population in projection of housing need does not presume allocation of the RHNA to Tribal Lands, and it is recognized that such allocation cannot be required to be accommodated on Tribal Lands by the RHNA process or pursuant to a local government's housing element.

Requests for Revision and Appeals Process

The implication that HCD has provided "guidance" to SCAG in conducting its appeals process is incorrect. To date, the Department has only been involved in discussing Tribal issues, and has not made recommendations regarding SCAG's appeal processes.

RHNA Allocations and Local Housing Elements

Several of the statements and references regarding the review of local housing elements are inaccurate. The Department has, in fact, informed SCAG that it would be inappropriate and inconsistent for Tribal nations' population and construction needs to be excluded from the RHNA allocation. In addition, the statement made on page 2 (second paragraph) of your letter is also inaccurate: *SCAG agrees with a suggestion made by HCD to work with the affected jurisdictions in the Housing Element preparation phase to determine whether or not their housing elements will have to address the tribal population housing needs within their jurisdictions.* At the February 6, 2007 Palm Springs meeting, HCD staff confirmed that local governments must address the final housing need allocated by SCAG, in total. Neither housing element law nor the review process allows for "engaging jurisdictions" wanting to negotiate a reduction in housing need.

Mr. Hasan Ikhata

Page 3

In summary, and in recognition of the concerns of some local governments with areas which include Tribal Lands, HCD staff is available to assist in the update of local housing elements. The statute allows local governments to credit new housing toward their RHNA in a manner consistent with the methodology used by DOF in annually updating its city and county population and housing estimates. HCD staff also discussed specific examples of effective housing and land use strategies that could be incorporated in the housing element update to meet the total RHNA. The Department remains committed to working with local governments in updating their housing elements and have begun surveying local governments to determine how best to assist them.

Everyone participating in the February 6th meeting acknowledged that immediate solutions to all housing issues involving Tribal populations and lands may not be reached within the current RHNA cycle and expressed interest in continuing discussions. HCD committed to discussing these issues with other State entities involved with entering into compacts between various Tribes and the State.

If you should have any questions, or would like to discuss further collaboration, please contact Linda Wheaton, Assistant Deputy Director, or Glen Campora, Senior Housing Policy Advisor, at (916) 445-4728.

Sincerely,



Cathy E. Creswell
Deputy Director